

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

NATHANIEL D. LOCKETT,)	
)	
)	
Plaintiff,)	Civil Action No.
)	17-12304-FDS
v.)	
)	
NANCY A. BERRYHILL,)	
)	
Defendant.)	

**ORDER ON MOTIONS TO PROCEED IN FORMA PAUPERIS
AND FOR THE APPOINTMENT OF COUNSEL**

SAYLOR, J.

Nathaniel D. Lockett filed a complaint against the Acting Social Security Commissioner challenging the denial of Lockett's application for child's insurance beginning January 1, 2009, before Lockett turned 18 as well as his application for supplemental security income benefits for the period beginning at age 18. With his complaint, plaintiff filed an undated application to proceed in district court without prepaying fees or costs and a motion for appointment of counsel.

Federal courts "may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor," if the litigant submits an affidavit that includes a statement of all his assets and shows that he is "unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). The determination of whether a plaintiff is indigent and therefore unable to pay the filing fee falls within the Court's sound discretion. *Cal. Men's Colony, Unit II Men's Advisory Council v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991), *rev'd on other grounds*, 506 U.S. 194 (1993). In

considering a request to waive the filing fee pursuant to the *in forma pauperis* statute, 28 U.S.C. §1915, “a court may consider the resources that the applicant has or ‘can get’ from those who ordinarily provide the applicant with the ‘necessities of life,’ such as ‘from a spouse, parent, adult sibling or other next friend.’” *Fridman v. The City of New York*, 195 F. Supp. 2d 534, 537 (S.D.N.Y. 2002) quoting *Williams v. Spencer*, 455 F. Supp. 205, 208-09 (D. Md. 1978) (other citations omitted).

Additionally, the *in forma pauperis* statute permits the Court to “request an attorney to represent any person unable to afford counsel.” 28 U.S.C. §1915(e)(1). However, there is no constitutional right to appointment of counsel in a civil case and to qualify for such appointment “exceptional circumstances must exist such that” denying “counsel will result in fundamental unfairness impinging on the party's due process rights.” *DesRosiers v. Moran*, 949 F.2d 15, 23 (1st Cir. 1991).

It is clear from plaintiff’s application that he is without income or assets. Additionally, he has no regular monthly expenses. Because this Court may consider the assets of a supporting relative or friend in determining whether a litigant is entitled to *in forma pauperis* status, the Court cannot determine whether Lockett is eligible for *in forma pauperis* status without knowing what, if any, financial support he receives from relatives or friends. Based on the incomplete disclosures on the application to proceed in district court without prepaying fees or costs, it is denied without prejudice. Plaintiff may renew his request by filing a signed and dated application to proceed in district court without prepaying fees or costs and include in that application a more detailed financial statement pursuant to this order.

Based upon a review of the pending motions, it is hereby ordered as follows:

1. The motion for leave to proceed *in forma pauperis* is DENIED without prejudice to its renewal.
2. If Lockett to proceed with this action, he must, within 21 days from the date of this Order either pay the \$400 filing fee or file a signed and dated application to proceed in district court without prepaying fees or costs and include in that application a more detailed financial statement pursuant to this order. The clerk shall send plaintiff, with this Order, the form for filing an application to proceed in district court without prepaying fees or costs.
3. The motion for appointment of counsel is DENIED without prejudice. Plaintiff may renew his motion after approval of a renewed motion for leave to proceed *in forma pauperis*.

So Ordered.

Dated: December 14, 2017

/s/ F. Dennis Saylor IV
F. Dennis Saylor IV
United States District Judge